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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,581	09/05/2003	Richard Allen Brown	224162	7842

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT PAPER NUMBER

1615

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/656,581	Applicant(s) BROWN, RICHARD ALLEN	
	Examiner Lakshmi S. Channavajjala	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9-5-03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Receipt of IDS dated 9-5-03 is acknowledged. Claims 1-49 are pending and all the pending claims have been considered for examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6-7, 10, 15, 18, 20, 24-27, 29 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,948,418 ('418).

'418 teaches a formulation comprising cyclomethicone, water/guanine/isopropyl alcohol, fragrance, FD&C colors, deionized water etc., each of which are claimed in the instant claims (formula A, 20, L 48-15). '418 do not state two different phases and guanine at the interface, as in the instant claim. However, instant specification also shows addition of guanine together with isopropyl alcohol to a composition containing cyclomethicone (examples) and accordingly, it is inherent to the composition of '418 that guanine is at the interface of oil and water phases and silicone oil is in the form of droplets.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6270782 to Sawyer et al (Sawyer) in view of David (cosmetics and perfumery 1973) and US 5,449,510 to Gregorie et al (Gregorie).

Sawyer teaches body spray composition with pearl-like oil-phase droplets in a spray assembly or container. The composition of Sawyer comprises an oil phase containing a pigment that forms oil droplets and imparts pearlescence in an aqueous phase (abstract). The oil phase further contains fragrances. The spray assembly of Sawyer is described in col.3, which is a container with a liquid composition, a spray pump, a dip tube and a spray nozzle. Sawyer teaches that the dip tube is usually made of polyethylene and summarizes the type of plastic materials that affect the droplets (table from col.4 to col. 5). Among the suitable plastic materials, Sawyer teaches fluorinated polyethylene (3rd material in the above table) and polyvinyl chloride as suitable materials that cause no apparent deformities of the pearl-like droplets, thus suggesting the claimed fluorinated dip tube of the instant spray assembly.

For claims 2-4, Sawyer teaches that the droplets are glossy pearls that are 1mm to 6mm (col. 7, L 16-17). For claims reciting various ingredients and the percentages of ingredients (such as claim 5-32), the oil phase of the composition comprises 10% - 30%

Art Unit: 1615

mineral oil, 55%-80% of alcohol, 0.5-5% of butylenes glycol, 0.004 %-1.0% pigments such as mica, 0.001% to 3% vitamins. For emollients of claims, Sawyer teaches peppermint oil (col. 10, L 51). For claim 16, Sawyer teaches that the fragrances of the composition are free of solubilizers and surfactants (col. 5, L 53-56). For claim 33, Sawyer teaches pH 3 to 7 that overlaps with the claimed range (col. 16-21). The composition of sawyer is a body spray and hence meets the limitation of claim 34.

Sawyer does not teach the claimed silicone oil (claims 1, 7-8) in the oil phase. The reference further lacks guanine at the interface and second silicone oils of claims 27-29, shape of the container wall as in claims 37-40 and radius and height of the container. Further, sawyer teaches a dip tube that does not extend into the composition due to the fact that the droplets cling to the composition. However, instant specification states that a fluorinated dip tube can be extended into the composition, which type of dip tube is taught by Sawyer. Further, instant claims do not recite any property of the droplets such as clinging or not clinging to the plastics and accordingly, using a dip tube that extends into the composition or does not extend into the composition depending on the final property of the composition would have been within the scope of a skilled artisan. Similarly, in the absence of any unexpected result, choosing the shape and size of the container containing oily droplets composition of Sawyer would have been within the scope of a skilled artisan because Sawyer teaches a container that serves the purpose of spraying the composition effectively.

Art Unit: 1615

David teaches preparation and stabilization of aqueous alcoholic products such as emulsions. David teaches inclusion of guanine to oil and water emulsion compositions, in the emulsion to impart pearlescent look to the compositions (abstract).

Gregorie teaches stable emulsions compositions comprising silicone oils in an aqueous phase, employed for cosmetic purposes. Gregorie teaches silicones such as polysiloxanes (col. 1), cyclomethicones as well as low viscosity silicones like polydimethylsiloxane (col. 2). Gregorie teaches inclusion of other additives such as fragrances, emollients, dye, pigments etc., in the silicone oil containing compositions (col. 3 and example 3).

Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to employ guanine of David and silicone oils of Gregorie in the composition of Sawyer containing oil and aqueous phases because David suggests that adequate amounts of guanine imparts pearlescence and stabilizes aqueous alcoholic compositions and Gregorie teaches that the silicone oils imparts stability to the emulsions. Accordingly, one of an ordinary skill in the art would have included optimum amounts of silicone oil and guanine in the composition of Sawyer with an expectation to achieve stable and pearlescent compositions having the desired pearlescent droplet sizes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 7.00 AM -4.00 PM.

Art Unit: 1615

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit
November 26, 2006

A handwritten signature in black ink, appearing to read 'Lakshmi S. Channavaajjala', with a horizontal line extending from the end of the signature.

LAKSHMI S. CHANNAVAJJALA
PRIMARY EXAMINER